88-1192

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NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1989

ALVIE B. GRAHAM,

Petitioner,

vs.

JUDGE J. WARREN BETTIS
ET. AL.,

Respondent.

PETITION FOR A WRIT CERTIORARI
TO THE OHIO SUPREME COURT

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100pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether a state court can operate as a court, absent a qualified judge to hear and rule on motions when court has been disqualified and Supreme Court has not notified litigant of status of Judges of Court of Common Pleas.

2. Whether a State Court use of Rule 37-D State of Ohio, absent a qualified judge to dismiss a Jury Demand trial in a civil liberties cause, and fail to review it in appellate, Exhibit #3 review. See transcript of July 29, 1981 82-CIV-695.

3. Whether a state appallate court can refuse to review all errors of Common Pleas State of Ohio when two distinct causes are combined in a single opinion. Decision by a state court judge, when said judge forces a person to proceed pro se and then penalizes pro se for argument brief in combination.

4. Whether Supreme Court in State of Ohio can refuse to issue an opinion and answer Mandamus, to correct their records, when question presented is used to dismiss a civil liberties cause, when seven judges in court made concurring votes to dismiss, Mandamus and cause litigant to suffer in six years of litigation because of pro se and denies due process of law by failure to issue an appealable order.

5. Whether state judge can issue a combination decision on a 60B motion for relief and suit for civil liberties, then deny that an appeal has been made. Appellate Court rules that an appeal was not profected when five assignments of errors and sixty-four cause of laws were cited in appeal and argued as combined brief. See appellate brief for information.

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JUDGE J. WARREN BETTIS,
ET. AL.,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

Petitioner, Alvie B. Graham, respectfully prays that a writ of certiorari to review the judgement of the Columbiana Court of Appeal, Seventh District, State of Ohio affirming respondent claim for violation of Rule 37(D), State of Ohio.

OPINIONS BELOW

Upon consideration of the motion for an order directing the Court of Appeals for Columbiana County to certify its record, it

is ordered by the Court that said motion is overruled, this order of the Supreme Court of Ohio and appears as Appendix A to this petition. Alvie B. Graham vs. Judge J. Warren Bettis, Et al., No. 88-754 (1988). The unpublished report of the Seventh District Court of Appeals, Columbiana County, Ohio is reproduced as Appendix B to this petition. The Transcript of the proceedings of July 29, 1982, is reproduced as Appendix C of this petition. The decision of the Ohio Supreme Court in No. 82-1517 is reproduced as Appendix D to this petition.

JURISDICTION

The decision of the Supreme Court of Ohio-1988 term 88-754; August 3, 1988; Upon consideration of the motion for an order directing the Court of Appeals for Columbiana County to certify its record, it is ordered by the Court that said motion is overruled.

Accordingly, the jurisdiction of this Court is invoked under the United States Constitution and this Court's decision No.81-440 U.S. Law Week Supreme Court Opinions, INSURANCE COPR. OF IRELAND, LTD. et al. PETITIONERS v COMPAGNIE des BAUXITES de GUINA

The fourth and fourteenth amendments to the United States Constitution, and 28 U S C section 1254

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

"The right of the people to be secure in their persons houses, papers, and effects, against unreasonable searches and seizures', shall not be violated..." Fourth Amendment to the United States Constitution.

"...nor shall any State deprive any person of life, liberty,or property, without due process of law;..." Fourteenth Amendment, Section 1 to the United States Constitution.

"State officials charged as individuals with unconstitutional activity are amenable to suit under this subchapter. Stebbius v. Weaver, D.C. Wis. 1975, 396 F. Supp." Title 42 § 1983

"A person need not be a state officer to be held to have acted under color of state law within the meaning of this section: it is enough that he is a willful participant in joint activity with the state or its agents. Meyer v. Lavelle, D.C.Pa. 1975, 380 F. Supp. 972." Title 42§ 1983.

"When a public official acts in an unconstitutional manner, his actions are stripped of their official cloak and he may be ordered to perform his official duties in a manner consonant with the Constitution; under

this legal fiction, the state is presumed not to accede to unlawful actions taken by one of its officials so that an order directed to the official to affirmatively correct his action is not being directed against the state, for purpose of determining whether suit is against a 'person,' within meaning of this section. O'Brien v. Galloway, D. C. Del. 1973, 362 F. Supp. 901."
Title 42 § 1983

MANNER IN WHICH CONSTITUTIONAL CLAIMS WERE RAISED

That on October 30, 1981, Judge Bettis dismissed the Court and granted this petitioner an outside judge. But the Court then sought out for the reclaiming of this petitioner and then transferred the cause to the docket of Judge Kennedy, who also comprises the same Columbiana County court. The subsequent dismissal on Rule 37(D) minus the protection of a qualified judge to rule on this petitioners' motions along with the arguments brought before the courts on the due process of law and the violation of the Fourth and Fourteenth Amendments of the United States Constitution has raised serious questions that have as yet gone unanswered. Any yet it is apparent that such questions have been thought through as is supported in the decision of Insurance Corp. of Ireland, Ltd., Et al. v. Compagnie des Bauxites de guinea, U.S. Law Week-Supreme Court Opinions-No. 81-440.

After an evidentuary hearing, Judge David T. Matia granted the defense motion, over this petitioner's objection, on jurisdictional grounds. This petitioner then appealled the cause to the Seventh District Court of Appeals in which throughout the brief were cited numerous Federal case laws, supportive to the matter appealled to that court. The Appellate Court held that dismissal under Rule 37(D) was harsh but justified, contrary to the facts presented by this petitioner.

The Supreme Court of the State of Ohio refused to review the matter, which once again furthered the denial of due process of law. Such actions now bring this petitioner seeking review of the Constitutional Rights.

STATEMENT OF THE CASE

The cause now before this Court orginated as a divorce suit in the Court of Common Pleas of Columbiana County as Case 80-CIV-1000, a divorce proceeding in which a flawed decision was issued with no avenue of appeal for this petitioner, because of the manner in which Judge Bettis and Larry Dickey, Attorney for the Plaintiff, handles the cause. Because Attorney Dilley was hospitalized, I was denied the right to an appeal of the decision of November 17, 1980, in Case 80-CIV-1000. I had no contact with Attorney Dilley until February 6, 1981, at which time he composed and sent a letter to Judge Bettis to explain the situation with no response. See Informational Packet (I.P.)6. Attorney Dilley then filed a motion on April 30, 1981. That motion was strong and might have had a bearing on the Judges' actions on March 28, 1981. But the resulting actions did not belong in a court of law, namely that of the "kangaroo court"

held on May 29, 1981.

The resulting actions were that upon Attorney Dilley's attempt to present a defense, he was twice reminded by Judge Bettis that he was at the fine line of contempt. Attorney Dilley then had me take the stand to speak on my own behalf. Upon issuing some few words, Judge Bettis found me guilty of direct contempt of court and sentenced me to ten days in jail. See affidavits of Attorney Dilley and myself, I.P. 12.

It was quite apparent that Attorney Dilley's health was not good enough to withstand any more abuse at the hands of this Court and I was left without interested Counsel on July 31, 1981. After the decision of the Court, I filed a letter by Certified Mail with the Clerk of Courts as to my situation and intentions. But due to health problems of my own, I had to remove myself from further involvment from the matter until such time as my doctor allowed me to continue. See I.P. 3.

After that, Attorney Smith was employed

as Counsel on my behalf, and was instructed that he was to work with Attorney Dilley on this case to perfect an appeal. Attorney Smith went and spoke with Judge Bettis and after he related the facts to me it became quite clear the course neccessary in order to perfect an appeal.

A transcript of the Divorce and May 29, 1981 proceedings were ordered and after carefully checking the records with the Court Reporter, Kaye Bettis, it was found that Virginia M. Pastore was the court reporter of record for that day. All of the tapes for all of the cases on the docket for May 29, 1981 were in the file with the exception of 80-CIV-1000. See Docket sheet, that date, R. 300; Columbiana Court of Common Pleas, Judge J. Warren Bettis, Court Rm. 1. I.P. 7. Attorney Smith, after three months, tried to convince me not to file an appeal on the matter and that the 60B Motion was an alternative to my situation. It was apparent, after his failure to produce a 60B Motion and to file a timely appeal along with

his statement of the facts as to his meeting with Judge Bettis, that he had decided to protect Judge Bettis or was informed by the Judge as to what his chances of an Honest appeal would be. The factors of the affidavits of Attorney Dilley and myself filed in case 80-CIV-1000, the 60B Motion, 82-CIV-695 and the actions of Judge Bettis, Et al., Respondents and the letter that Attorney Smith delivered to Judge Bettis (See I.P. 12) to see if settlement could be made, should have finalized this matter. After a consultation, Attorney Smith reccommended that I file Chapter 13 because of the actions of Judge Bettis and Attorney Dickey, in the original suit in Case 80-CIV-1000, and sent me to Attorney Davis, whose father (a Mahoning County Judge) he had helped when he was brought up on a charge of misuse of funds. I filed Chapter 13 for protection from these pettifogging shysters in this County.

After ten months of meetings and appointments, I sent a letter to Attorney Smith as to

his position on this cause. See I.P. 1. That finally led to the filing of a Motion to Vacate Judgment under 60B in case 80-CIV-1000 and eventually to the filing of 82-CIV-695, Suit for Damages-Jury Demanded.

It became quite clear to this Pro Se that, after the disqualification of Judge Bettis, that the Court would try to gain jurisdiction of this petitioner, now before this Court. The main thrust of the court was to regain control of the cause before it, that being a 60B Motion to Vacate and Suit for Damages, jury demanded.

On July 29, 1982, a hearing was held in the Common Pleas Court of Columbiana County, at which time the judge of record, Richard D. Kennedy, ruled. See pages 6-8 of the transcript, July 29, 1982, Case 80-CIV-1000. See Motion to Amend Change of Venue to 82-CIV-695, in the transcript of Case 80-CIV-1000 in Plaintiff's Exhibit 3, 82-CIV-695. The Respondents filed a Motion for Deposition with the last motion being on August 30, 1982.

This petitioner argued that there was no court for the protection of his rights from the actions of the respondents and that Attorney Smith had not filed his cause but had asked for leave to plead. On August 26, 1982, this petitioner filed for protection under Rules 26 and 30 of the Ohio State Courts. (See I.P.9) On September 30, 1982, this petitioner filed a Mandamus to Compel (See I.P. 11) Judge Kennedy and the Clerk of Courts to file within five (5) days to advise this petitioner as to the decision of the Supreme Court of the State of Ohio. On the sixth day, this petitioner accompanied by a witness, made an appearance at the office of the Administrator of the Supreme Court of Ohio. After checking, this petitioner was told that no papers had been forwarded to that Court.

After two telephone calls, recorded on cassette tapes, to the Administrator he in turn sent a letter on October 15, 1982 at which time Judge Kennedy stepped down. In the Mandamus of September 30, 1982, the Court was

again warned that any of their actions would violate the due process of law as is upheld in the cases of McDonald vs. Mabee, U.S. 90 (1917) and Hammond Packing Co. vs. Arkansas, 212 U.S. 322 (1909). See I.P. 10.

The trial judge upheld that Plaintiff, Alvie Graham, after notice, unjustifiably and willfully refused to attend his own deposition after it had been three (3) times rescheduled by defense counsel at Plaintiff's request. This petitioner then appealled the cause to the Seventh District Court of Appeals. The matter of jurisdiction and due process of law was argued throughout the Appellant's Brief in Case 84-C-51 with such matters being fully supported at pages 13-15 and 20 of Petitioner's Brief.

In the findings of the Appellate Court Judges, it upheld that it is appellant's burden to demonstrate not only that error intervened but that such error afftected a substantial right.

The actions are quite clear and can be

further ascertained by a through review of the Transcript - 1983 Term, Court of Common Pleas in cases 80-CIV-1000 and 82-CIV-695. The subsequent actions of the Respondents from July 29, 1982 and the result of a failed appeal on the issues now brings this cause to this Supreme Court of the United States for action.

REASONS FOR GRANTING THE WRIT

This Petitioner presents to this Court the reasons for the granting of the Writ of Certiorari. Throughout this petition you will find that the arguments presented by the respondents are actually those of this petitioner that have been presented in rambling defense of this case in each and every instance at the various trials of this case. The petitioner wishes to point out to this Court that in cause 82-1517, which was before the Supreme Court of Ohio, and appears as Plaintiff's Exhibit 1 in the March 28,1982 transcript of case 82-CIV 695 at page 7 is found petitioner's statement;

> "That this Motion for Mandamus should stand and that the records should be corrected and the question of jurisdiction is clearly outlined in the U.S. Supreme Court's decision of 1982 in the case of Ins. Corp. of Ireland, LTD. Et al. v. Compagnie des Bauxites de Guinea, No. 81-440 argued on March 2, 1982 and decid-

ed on June 1, 1982, that to continue to allow the Defendants to petti-fog the issue and to seek a dismissal because they did not know what was going on is purely a miscarriage of any of the rules that have been set up to safeguard such action."

In this action, this petitioner sought to correct the records and to make the record speak the truth and in this cause the respondents also became deaf, dumb, and mute, and the end result was the finished product of that Court. Although seven judges concurred, they only sent me a copy of the dismissal without any judges' signatures, a denial of due process of law. (See Appendix D.)

Common Pleas Court Judge Kennedy on July 29, 1981 ruled and had some form of affidavit sent to the Supreme Court of Ohio with regards to case 80-CIV-1000 and a motion to add 82-CIV-695 was discussed at this time. The papers were forwarded to the Supreme Court of Ohio to make a determination as to his jurisdiction byt te matter had already been determined prior to this by

Judge Bettis and Attorney Smith, who agreed that an outside judge was to be had. This was done after Attorney Smith failed to file an appeal for this petitioner due to the lack of a transcript or notes for the July 29, 1981 hearing in case 80-CIV-1000.

That the events that transpired on July 29 through October 15, 1981 will be the main thrust of this petitioner's arguments of jurisdiction. We now turn to Ohio Juror 3d § 17 & 59 where we see "that there is only one common pleas court in any county of the State of Ohio." And that further, "there is only one common pleas court regardless of how many judges sit on the bench." Therefore, the dismissal of the Court by Judge Bettis and the subsequent granting of an outside judge further encompasses our belief that the actions of the respondents when they sought their motion for Deposition was in a foreign jurisdiction and the subsequent use of Rule 37D must now be held null and void. The State of Ohio must again be looked at in the context of being on a fishing expedition so as to try to gain

control of this petitioner with regards to the cause at hand. To further argue our cause we once again cite the case of I.D. at page 15, Ins. Corp. of Ireland, Ltd., Et al. pages 45-56 ".. with respect to personal jurisdiction. The requirement that a court have personal jurisdicition flows not from Art. III but from the Due Process Clause. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty. Thus, the test for personal jurisdiction requires that the 'maintenance of suit...not offend traditional notions of fair play and substantial justice.' International Shoe v. Washington, 326 U.S. 310, 316 (1945).

The respondent has elaborated on the fact that this petitioner failed to comply with Rule 37(D), when in fact, the above mentioned case itself clearly lays the foundation for personal jurisdiction. To have complied with that order would have been "judicial suicide." For what

would have prevented the respondents, who have knowingly destroyed the truth and manufactured evidence, from threatening and intimidating this petitioner and from enlarging upon any facts given at such Deposition inasmuch as this petitioner would have been outnumbered 6-1, with no protection of a court.

The failure of the Common Pleas and Ohio Supreme Court once again became evident to this Pro Se petitioner in that they refused/ignored to address the matter that was supposed to be sent to them on July 29, 1981 by the Clerk of Courts, Carl Stacey resulting in my personal trip to the Ohio Supreme Court on October 6, 1981 which led to the findings that no papers had been forwarded from the inferior court, once again presents a question of the denial of due process of law. Petitioner further argues Hammond Packing Co., v. Arkansas, 212 U.S. 322 (1909) at page 45-57 that "because a party need not obey the orders of a court until it is established that the court has personal jurisdiction over the party. If there is no obligation to

obey a judicial order, a sanction cannot be applied for the failure to comply. Until the court has established personal jurisdiction, moreover, any assertion of judicial power over the party violates due process." Going further we find, "There is no thing in the Rule 37 to suggest that it intended to confer a grant of personal jurisdiction." That realizing the context of this decision was based promarily on Federal Law where constitutional rights are concerned, the Federal interpation should prevail in a cause for due process. Further support of the arguments on denial of due process of law is supported by the hearing of March 28, 1983 before Judge David T. Matia. At this hearing this petitioner approached all attorneys to seek time so as to interview a Counselor in Columbus about defending this petitioner, to which all agreed. In a telephone conversation recorded with consent, to Judge Matia this petitioner was told, after some discussion, that the hearing was to be held as scheduled on March 28, 1983 and to be in court without fail. This petitioner

appeared Pro Se., and the result of some six years of litigation with no results to correct any of the actions or errors of these courts left this petitioner very little hope. That after presenting arguments of two cases combined into one cause I received an opinion of two separate causes that being on the 60B and a Suit for Damages and a combined opinion. The Seventh District Court of Appeals, in their opinion, failed to recognize and construed after 3½ years that two causes were before it and although this petitioner did not separate these causes the Appellate Court, in its opinion, accused this petitioner of not perfecting an appeal on a 60B Motion, when indeed throughout the course of this cause and by the brief submitted along with the assignment of errors, it makes statements time and again to the 60B as well as the suit for damages and the efforts of the judges of the Court of Appeals can be ascertained by the way oral arguments were handled by tese three judges. Two witnesses and myself attended the arguments. Now if

you can picture three judges, one presiding, and two sitting, in a court of law. The then presiding Judge O'Neil asked a direct question of this petitioner. O'Neil - "Mr. Graham, were you issued a 14 day demand for deposition?" Graham- "No Sir." O'Neil to Attorney Pfau "Bill, is that correct?" Pfau-"Yes, Sir." O'Neil-"Just who in the hell does he think he is?(In referrence to Judge Matia) That's all I want to hear. Let's to to dinner." Upon Attorney Pfau's answer to the Court, the sitting Judge Cox, looked upward and then threw the pencil he had up into the air and then caught it. He sat there just shaking his head in utter disbelief.

The actions of the judges, after $3\frac{1}{2}$ years of pondering, issued the opinion of the court which has lead this petitioner to believe that the statement and opinion of now presiding Judge Cox to the Youngstown Vindicator was the foregone conclusion with regards to the decision on this petitioners' cause. That statement being "If it looks like a skunk, walks like a skunk and smells like a skunk, it must be a

skunk!"

This petitioner believes that the opinion of the court of appeals and the actions of the respondents leads true thoughts into denial of due process of law totally, and the cause for suit under Title 42 § 1983 is justifiable. The questions presented for review to this Supreme Court in this writ, should leave this court with some conclusions as to the actions not only of former Judge Bettis but also to the actions of those people who are ascertained and to protect the rights of an individual. In support of regarding these persons as "pettifogging shysters" I quote Bailey v Kalamazoo Pub. Co. Mich. 251,256 "This combination of epithets every lawyer and citizen knows belongs to none but unscrupulous practitioners who disgrace their profession by doing mean work, and resort to sharp practice to do it." In Zarchone v. Perry, 572 F.D. 2d, 52-57 we see the results of another cause where a judge usurped his authority handled and ousted from office. The actions of former Judge Perry with the handcuffing and berating of the coffee vendor

Zarchone, bears similar actions with the former Judge Bettis' actions towards this petitioner, and his counsel at the May 29, 1981 hearing. The actions of Judge Bettis at that hearing led to the sentencing of 10 days in jail for direct contempt of court for this petitioner, and his counsel was twice warned of being on the fine line of contempt of court. After the petitioner was led from the court by the Bailiff, the Judge further berated the late Attorney Dilley and told him to never appear in his courtroom agin. This type of behavior leds to serious consideration that the cause of action and destrection of evidence to prevent an appeal once again denies due process of law. The results that followed both in common pleas and Appellate court leaves this petitioner with a question of whether Judge Bettis absent of a trial by jury is immune from his actions through judicial immunity? And also whether his statements made in his fifth defense in that any communication he made to this petitioner's counsel, who is an officer of the Court, for which the plaintiff now complains about were privileged.

In 7 Am Jur 2d § 171, 172, 175 is found the fact that an attorney is liable if he is negligent in preparing, filing, and servings pleadings essential to the client's cause. A lawyer retained by a client for the sole purpose of defense, acting as an officer of the ccurt is subject to the laws his code of ethics to support his client's cause without respect tc the various individuals involed and the taking of money constitutes contract and a bond for the performance of this lawyer. Attorney Smith failed to comply with every standard required of him, in that he accepted this petitioner's cause and monies and then saw fit to copitualte with Judge Bettis and frivor away this petitioner's chances of an appeal, again denying due process of law.

On the other hand, Respondents Dickey and Zahorsky saw fit to acquire a judgment lien on property already in respondent's former married name with this petitioner which is not allowed in any case law stated by this petitioner, for in Jones v. Hall (1941) 15 SE 2d 108

(See page 4 of I.P.10)provides that "a'judgment lien' is not a proprietory right in the lands of the judgment debtor but is merely a right to levy on such lands for the purpose of satisfing the judgment to the exclusion or of any right which may have accrued to others since the attachment of the lien." Liens are property rights and cannot be deversed as a matter of procedure. But on the other hand, liens do not protect or grant somebody the right to hold property in their name when they have only been given a lien. Then when the cause was brought before the Appellate Court the same respondents failed to answer their brief but yet sought relief from the cause at hand.

This petitioner has argued much case law, as is apparent in I. P. -10, which has seemed to be to avail inasmuch as the inferior courts, that have had this cause, have appearred to completely ignore even Federal case law. This informational packet has been supplied to this Court as foregone proof of this petitioner's efforts to have this cause rectified and to

obtain the due process of law due any citizen.

Furthermore, it is found in Picking v.Penn R., 152 F 2d 753, that "where a plaintiff pleads pro se in a suit for protection of civil rights, the court should endeavor to construe plaintiff's pleading without regard for technicalities." Further on we find, "misuse of power by virtue of state law and made possible only because wrongdoer is clothed with authority of state law, is action taken 'under color of any statute' within statute making one who, acting under color of any statute, subjects any citizen to deprivation of any rights, priviledges, or immunities secured by Federal Constitution and laws liable to party injured in action at law. 8 U.S.C.A. § 42. It is the desire of this petitioner to make available to this Court all information pertinent to the cause now before it.

CCNCLUSION

Petitioner, Alvie B. Graham, prays that a writ of certioria shall issue from this court in the above captioned case to preserve and protect the rights of this petitioner. Further in conclusion, this petitioner has offered throughout the course of this litigation many solutions. But due to the Pro Se statis that has been forced upon me, first in 1964 and again in 1981, by the respondents and the failure of the judicial system to act upon any of the motions except to let them hang without an opinion due to the Pro Se statis further denies fair play and substantial justice. Haines v. Kerner, 427 FD 2d 71, and Pickens v. Penn. RailroadI.D. at page , clearly adjucates the rights of a Pro Se litigant. The courts continue to deny these rights bringing cause, under the Constitution, for the denial of due process. My property has been held "hostage" for some eight years under a judgment which is contrary to law.

The amount of expense in fighting this lawsuit could have satisfied the Judgment Lien many times. The anguish and health problems of this Petitioner demands restitution and compensation of some form. For it is written in Habakkuk 1:4, "Therefore the law is slacked, and judgment doth never go forth; for the wicked doth compass about the righteous; therefore wrong judgment proceedth."

Respectfully submitted,

_____

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APPENDIX A

Entry of the Ohio Supreme Court in Alvie B. Graham v. J. Warren Bettis, Judge, et al., (No. 88-754, August 3, 1988)

APPENDIX A

THE SUPREME COURTOF OHIO

COLUMBUS

1988 TERM

To wit: August 3, 1988

Alvie B. Graham

Appellant

v.

J. Warren Bettis, Judge

et al.,

Appellees

Case No. 88-754

E N T R Y

Upon consideration of the motion for an order directing the Court of Appeals for Columbiana County to certify its record, it is ordered by the Court that said motion is overruled.

Motion Fee, $20.00, paid by Alvie B. Graham.

Thomas J. Moyer

Chief Justice

I, Marcia J. Mengel, Clerk of the Supreme Court of Ohio, do hereby certify that the

foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

in witness whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court, on this 3rd day of August, 1988.

Marcia J. Mengel Clerk

_____DEPUTY
Rita A. Jackson

THE SUPREME COURT OF OHIO

Style: Alvie B. Graham v. J. Warren Bettis, Judge, et. al.

Case No: 88-0754

Case Type: Mot to Certify Record

DATE	ACTION
04-26-88	Notice of appeal filed Filed by Alvie B. Graham
	Request for extentsion of time $2 fee by Alvie B. Graham #2456 memo in support due 5-27-88 GRANTED 4-26-88
05-27-88	Memo in support of juris filed
06-03-88	Return receipt received Postage $3.00
06-06-88	Return receipt received Postage $3.00
06-07-88	Return receipt received Postage $3.00

06-16-88	Memo opp juris filed
	Eugene Smith
06-22-88	Memo opp juris filed
	Judge Bettis & Carl Stacey
07-11-88	Reply memo filed
07-27-88	Scheduled for jurisdictional question
	OVERRULED 08-03-88
08-17-88	Cert copy of entry sent to clerk

APPENDIX B

Opinion of the Appellate Court of Ohio in Alvie B. Graham v. Judge J. Warren Bettis, et al., (Seventh District, Columbiana County, February 29, 1988)

APPENDIX B

February 29, 1988

84-C-51

IN THE COURT OF APPEALS, SEVENTH DISTRICT

STATE OF OHIO, COLUMBIANA COUNTY

	APPEAL FROM THE
ALVIE B. GRAHAM	COMMON PLEAS COURT
PLAINTIFF-APPELLANT	COLUMBIANA COUNTY
-vs-	
JUDGE J. WARREN BETTIS	HONORABLE DAVID T.
ET. AL.	MATIA, JUDGE, SITTING
DEFENDANTS-APPELLEES	BY ASSIGNMENT OF THE
	SUPREME COURT, STATE
	OF OHIO

CHARACTER OF	CIVIL APPEAL FROM THE
PROCEEDINGS:	COMMON PLEAS COURT,
	CASE NO. 82-CIV-1000

JUDGMENT: Affirmed

APPEARANCES:

For Plaintiff-Appellant:

Alvie B. Graham, Pro Se
31987 Georgetown Rd.
Salem, Ohio 44460

For Defendants-Appellees:

Paul D. Eklund
816 Engineers Bldg.
Cleveland, Ohio 44114

Robert Hartford, Jr.
91 w. Taggart St.
East Palestine, Ohio 44413

William E. Pfau, III
900 City Centre One
Youngstown, Ohio 44501

Hon. Edward A. Cox
Hon. Joseph E. O'Neill
Hon. Joseph Donofrio, JJ.

FOOTNOTES

[1] Defendants-Appellees Larry M. Dickey, Bertha Zahorsky take no part in this appeal.

[2] The text of suit 82-CIV-695, Jury Demand, follow: The suit arrises out of the May 29, 1981 hearing, the kangaroo court of Judge J. Warren Bettis, in which all notes of the proceedings were destroyed to prevent an appeal in which Attorney Eugene Smith was hired to perfect an appeal, and failed to do so.

The 60B Motion for relief from judgment was also filed under 80-CIV-1000 on or about the same time, May 27, 1982, with a request that all hearings on suit for damages be held in abeyance until such time that the facts were ascertained as to the hearing on May 29, 1981. The text of the hearing of July 29, 1982 stated as Case 80-CIV-1000 before the Honorable Judge Richard D. Kennedy, transcript of procedings follows - Opinion of Court of Alleals.

Defendant J. Warren Bettis is being sued in the sum of Three Million Dollars ($3,000,000.) for his participation in Plaintiffs' suit, Case No. 80-CIV-1000. He is hereby charged with defamation of character, bias and prejudice, violation of his cannon of ethics and oath of office, Fraud and Fraud upon the Court, violation of Ohio Revised Code Section 149.43 on Public Records, intent of unjust incarceration, intentional physical and mental anguish, unnecessary and unjust financial difficulties and malfeasance of office, stemming from his involvment in the above captioned case.

The Clerk of Courts, Carl Stacey is being sued in the sum of Two Hundred Thousand Dollars ($200,000.) for his violation of Ohio Revised Code Section 149.43 on Public Records, his failure to perform his duties and violation of his oath of office, in case no. 80-CIV-1000.

That Attorney Larry Dickey is being sued in the sum of Two Million Dollars ($2,000,000.) for

menancing a hardship, Fraud and Fraud upon the court, violation of his oath of office and ethics and violation of a letter of July 24, 1981, which in accordance to Old English Law is a contract (copy attached) while acting as legal counsel for Bertha I. Graham in Case No. 80-CIV-1000.

That Bertha I. (Graham) Zahorsky is being sued in the sum of Fifty-Thousand Dollars ($50,000.) for false accusation of intentianal harm, intentional perjury, contempt of court, menancing a hardship and physical and mental anguish perpetrated by her in the suit against the Plaintiff in Case No. 80-CIV-1000.

That Attorney Eugene Smith is being sued in the sum of Two-Hundred Thousand Dollars ($200,000.) for his breech of contract, violation of his oath of office and conspiracy to deprive the due process of law while acting as legal counsel for this Plaintiff.

Opinion of Court of Appeals delivered by Judge Cox, P. J.

Plaintiff-appellant, Alvie B. Graham, has timely appealed a judgment of the Columbiana County Court of Common Pleas which dismissed his complaint against defendants-appellees, Judge J. Warren Bettis, et al pursuant to the sanctions allowed for by Rule 37(D) of the Ohio Rules of Civil Procedure. Being mindful of appellant's pro se status in the instant case, we have subjected the records of the cases subjudice to successive reviews. In doing so, we have repeatedly scrutinized appellant's brief on appeal to flush out every colorable argumet he has attempted to present to this court so that we may fully address his contentions. Nonetheless, and for the following reasons, we must overrule what we perceive to be appellant's basic assignments of error and affirm the judgment of the trial court.

The record discloses the following.

In July of 1980, Bertha (Graham) Zahorsky

instituted a divorce action against appellant in the Columbiana County Court of Common Pleas (case no. 80 CIV 1000). On December 17, 1980, a decree of divorce was granted to Miss Zahorsky. On April 30, 1981, appellant filed a motion for modification of the divorce decree. On May 21, 1981, appellant's former wife, Miss Zahorsky, also filed a motion for modification. The trial court conducted a hearing on both parties' motions on May 29, 1981 and during the hearing on these motions, it found appellant in direct contempt of court and sentenced him to ten days in the county jail. There is nothing in the record to indicate that appellant appealed the trial court's finding of contempt. Thereafter, on August 18, 1981, the trial court issued its judgment entry sustaining Miss Zahorsky's motion for modification and overruling appellant's motion for modification. Appellant did not appeal this judgment of the court.

The next record entry of consequece was that of May 19, 1982, appellant filed a Civ.

R. 60(B) motion for relief from judgment. This motion was directed to both the November 4, 1980 divorce hearing and the May 29, 1981 hearings on the parties' respective motions for modification as well as various frauds alleged by appellant. The record also discloses both before and subsequent to appellant's having filed his 60(B) motion for relief, he also filed various motions for a change of venue and successive affidavits of prejudice against several judges who were assigned to hear the motion.

Inexplicably,and before appellant's motion in case no. 80 CIV 1000 was ruled on, on November 30, 1984, he filed a pleading captioned as a "Notice of Intent to Appeal and Memorandum." Appellant's memorandum therein was essentially a series of allegations against the appellees which were also embodied within his complaint for damages against them in a separate action he filed against appellees in the Columbiana Ccunty Court of Common Pleas (case no. 82CIV 695).

While we have attempted to give due

deference and consideration to the fact that appellant has proceeded pro se in this matter, we nonetheless must hold appellant to the standards applicable to any counsel of record who represents a party. Accordingly, we must find that appellant has abandoned his motion for relief from judgment in case no. 80 CIV 1000. In filing his intent to appeal from that case he deprived the lower court of any jurisdiction to proceed in the matter. Appellant cannot now complain to this court of various delays in that particular case as such delays were occasioned by his successive motions attacking the venue of that court and his various affidavits of prejudice against several judges who were assigned to hear the case. Moreover, as the record clearly discloses there was no final order from which an appeal could be taken in case no. 80 CIV 1000, this court is without jurisdiction to entertain appellant's appeal from that case and we, therefore, dismiss that appeal.

We next turn to a considereation of appellant's appeal of the dismissal of his separate action against appellees for damages in Columbiana County Common Pleas Court case no. 82 CIV 695.

On May 27, 1982, appellant instituted this suit for damages against the appellees within. Appellant alleged that the judge, the clerk of courts, his former wife, his former wife's attorney and his own former attorney were guilty of various frauds, breaches of duty and malpractice. All of these allegations were based upon what appellant perceived to be violations of his various rights in the divorce case which preceded it, case no. 80 CIV 1000. Appellees timely answered and attached to their answer was a notice of deposition for the taking of appellant's deposition. Thereafter, appellees' counsel rescheduled appellant's deposition, at his requests, on three different occasions and attempted to accommodate appellant both as to date, time and location for the depositions.

On August 30, 1982, the final date for

appellant's deposition, counsel for the appellees waited for over one-half hour for appellant to appear at the designated place and time; a court reporter was also in attendance. While appellant had been properly noticed for all the scheduled depositions including this last one, appellant failed to appear. However, on August 25, 1982, appellant had filed what he captioned as a "Motion to Vacate Discovery Due to Lack of Court." This pleading essentially again attacked the jurisdiction of the court and the qualification of the then presiding judge to hear the matter.

On September 26, 1982, counsel for appellees, Bettis and Stacey, filed a motion for immediate sanctions pursuant to Civ. R. 37(D), for appellant's willful failure to appear for his own deposition. These appellees also filed the short transcript of the August 30, 1982 deposition which appellant failed to attend. Thereafter, the remaining appellees filed similar motions for sanctions.

Subsequent to this, the Ohio Supreme

Court appointed a judge of the Common Pleas Court of Cuyahoga County to hear this matter. That judge conducted an evidentiary hearing on appellees' motions for sanctions on March 28, 1983. Appellant attended this hearing and argued in opposition to appellees' motions.

By judgment entry of November 5, 1984, the lower court found that appellant, after receiving notice of depositions, unjustifiably and willfully refused to attend his own deposition after it had been three times rescheduled by appellees' counsel at appellant's request. The court further found the appellees incurred substantial expense and attorneys' fees and costs as a result of appellant's failure to attend and determined that appellant's underlying claims against appellees were meritless and subject to judicial immunity as well as other defenses. Accordingly, the trial court dismissed appellant's complaint with prejudice and ordered appellant to pay a sum certain to each of appellees' counsel in prosecuting the motion for sanctions and the court reporter's

expenses. Appellant filed a timely notice of appeal from this judgment entry on November 30, 1984.

In reviewing the record of the case sub judice, appellant's brief on appeal and his points on oral argument to this court, we find only two questions presented for our review: whether the trial court had jurisdiction to grant the sanctions and whether those sanctions were proper. As the lower court's dismissal with prejudice was based upon appellees' motions pursuant to Civ. R. 37(D) we cannot reach the merit or lack of merit of appellant's case as suggested by the lower court's obiter dictum regarding judicial immunity and other defenses.

In addressing the issue of whether or not the lower court had jurisdiction we must answer in the affirmative.

The record clearly discloses the Columbiana County Court of Common Pleas had jurisdiction over the subject matter and all the parties. Moreover, and despite appellant's motions and allegations to the contrary, the instant matter

was also properly venued in Columbiana County. Apparently, appellant has misled himself into believing that if various judges of that court excuse themselves from hearing the case or are disqualified from hearing the case, jurisdiction with that court fails. This is simply not the case.

The jurisdiction of the court follows the court, not the judges assigned to that court. Were it otherwise, appellant's entire case would have been subject to an immediate dismissal as having been filed with the wrong court. Accordingly, and for all the reasons stated, we find that both jurisdiction and venue of the Common Pleas Court of Columbiana County to hear the instant case was proper and we, therefore, overrule appellant's contention to the contrary.

We next address the issue of whether or not the trial court properly imposed sanctions of dismissal with prejudice and the award of costs and attorneys' fees against appellant pursuant to Civ. R. 37(D).

Civ. R. 37(D) states in pertinent part:

> "If a party*** fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice,***the court in which the action is pending on motion and notice may make such orders in regard to the failure as are just, and among others it may take any action authorized under subsections (a), (b), and (c) of subdivision (B)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act*** to pay the reasonable expenses, including attorney's fees, caused by the failure (to attend)****.
>
> "The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(C)."

Accordingly, our review focuses on whether or not the court abused its discretion in granting the relief requested by appellees and imposing the sanctions of dismissal against appellant.

> "Civ. R. 37(D) provides a one-step method for immediate imposition of sanctions when a party fails to appear at a properly noticed deposition. The method for obtaining an advance court determination to avoid the imposition of immediate sanctions is to move for a protective order, pursuant to Civ. R. 26(C), before the time for compliance occurs." Dafco, Inc. v.

Reynolds (1983). 9 Ohio App. 3d 4 at paragraph 1 of the syllabus.

Clearly then the lower court had authority to determine whether or not to impose the ultimate sanctions of dismissal in this case. Additionally, we find appellant's purported protective order, filed just five days before the last scheduled deposition of him, did not deprive the trial court of jurisdiction to hear the motion for sanctions.

In the first instance and as we have already noted, appellant's purported motion for protective order was again nothing more than an assualt upon the jurisdiction of the court and the qualifications of the particular judges. Moreover, appellant failed to obtain an advance court determination by filing his purported motion immediately prior to the final scheduled date for deposition of him. Finally, the record clearly discloses that the trial court did not grant appellees' motion for sanctions and dismiss appellant's complaint until November 5, 1984, and only after first having granted an evidentiary

hearing on the motions to all parties on March 28, 1983. In sum, we believe the record clearly discloses the trial court gave the appellant all that he was due. Even if appellant had not filed his purported protective order, the record would otherwise support the trial court's judgment without an evidentiary hearing.

Our duty as a reviewing court is to presume the regularity and legality of the proceedings below. It is appellant's burden to demonstrate not only that error intervened but that such error affected a substantial right. Where questions of fact and law are contested in an evidentiary setting it is for the trial court to weigh the questions of fact in reaching its determination. Our duty then is to defer to the trial court's judgment in that regard where there is any competent credible evidence to support that judgment.

Upon the entire record of the case sub judice we can find no abuse of discretion by the trial court in its sustaining appellees' motions for sanctions against appellant.

While the sanction of a dismissal with prejudice may be severe it is nonetheless provided for under Civ. R. 37(D) and by reference to Civ. R. 37 (B) (2) (c). Even absent the trial court's specific finding that appellant unjustifiably and willfully refused to attend his own deposition, the record of the case sub judice clearly evidences such an unjustifiable and willful refusal by appellant.

Secondly, had the trial court declined to impose any sanctions against appellant, it was nonetheless mandated to tax expenses, including attorneys' fees incurred by the appellees, against appellant unless the trial court expressly found appellant's failure to appear was substantially justified. Bilikam v. Bilikam (1982), 2 Ohio App. 3d 300; Rogers v. Kazee (1983),10 Ohio App. 3d 139.

Accordingly, and for all the reasons stated, appellant's assignments of error must be overruled and the judgment of the trial court in all respects affirmed.

O'Neill, J. concurs.

Donofrio, J., concurs

APPROVED:

_____

Edward A. Cox, Presiding

Judge

APPENDIX C

Transcript of Proceedings in the Court of Common Pleas in Bertha I. Graham v. Alvie B. Graham, (No. 80-CIV-1000, Columbiana County, Ohio, July 29, 1982)

APPENDIX C

TRANSCRIPT OF PROCEEDINGS

OF

July 29th, 1982

THE HONORABLE RICHARD D. KENNEDY, JUDGE.

Be it remembered, that, heretofore, to-wit: On the 29th day of July, 1982, the same being one of the judicial days of the said ccurt, this cause came on for trial in Court-room #1 in said County and State before the Honorable Richard D. Kennedy, Judge, and was continued thereafter as hereinafter noted.

Mr. James Hartford Appeared on behalf of Plaintiff

Mr. Alvie B. Graham Appeared Pro Se

WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD:

MR. GRAHAM: I have a person who takes notes for me.

THE COURT: Pardon?

MR. GRAHAM: I have a person who takes notes for me.

THE COURT: Well, let me call the case and

I'll explain this.

Alright, the next case is BERTHA I. GRAHAM VS. ALVIE B. GRAHAM, #80/CIV/1000. Present in Court is Attorney James Hartford. Now, you're representing Bertha Graham?

Mr. Hartford: Correct, your Honor. Mr. Dickey is indisposed today.

THE COURT: And the Defendant, Alvie B. Graham is also present.

Now, what is your name, please?

MRS. CLARKSON: Hum?

THE COURT: What is your name?

MRS. CLARKSON: Mrs. Clarkson.

THE COURT: Are you an Attorney?

MRS. CLARKSON: No, sir. I'm just taking notes for Mr. Graham.

THE COURT: Very well, you'll have to sit in the public section.

MRS. CLARKSON: Alright.

THE COURT: Only Attorneys are permitted before the Bar or parties to lawsuits.

MRS CLARKSON: Alright.

THE COURT: You may sit back there, back in

the public section.

(Mrs. Clarkson goes directly behind the bar of the Courtroom.)

THE COURT: Now, in this case there have been several Motions filed. A first Motion was filed on May 19th, 1982, and that motion is styled Motion to Disqualify Judges; and in the first paragraph of that Motion, it states that Judge Kennedy be disqualified.

The next Motion was filed on May 9th, 1982, which is styled a Motion for Change of Venue.

Then, on June 28th there's filed a Request to Amend the change of Venue and Motion to Disqualify.

Then, on July 29th, 1982, an additional document was filed styled Amended Change of Venue, whatever that is.

Now, Mr. Graham, if you want to be heard, would you please stand at the Podium, so it can be tran - so the record can be made. You tell me whatever you want to tell me.

MR. ALVIE GRAHAM: Your Honor, in this case I filed several requests to

have a change of venue, and I filed an additional paper today, as Judge Bettis on October the 6th, 1981, or thereabouts, disqualified this Court and himself from hearing any further Motions on this case. I have no objections, your Honor, as to the Court performing the duties, but I feel that, being as this case is as complicated as it isnow, that it would be unfair to you and be unfair to me to have you sit in judgment; and, therefore, I ask with these things in mind that you consider that we can have an outside Judge.

It is also known by me, you Honor, that you are involved in several parts of litigation with people whom I associate with as a Pro Se litigant.

With all due respect to this Court, this is a very demeaning thing for me to have to be in this Court at this time, but as there seems to be no other way, that I have tried in several cases to get consel to represent me, and it has not came out that way. Therefore, I have to act on my own behalf; and since Judge Kennedy-

or Judge Bettis has disqualified this Court, under the Rules of Court and the Ohio Law, that even though there is two Judges in the Court, that the Court remains one Court, and the Court has already been disqualified.

THE COURT: Okay?

MR. GRAHAM Yes.

THE COURT: Alright, Mr. Hartford.

MR. HARTFORD: Your Honor, on its face, I would object---

COURT REPORTER: Mr. Hartford--

THE COURT Mr. Hartford--

COURT REPORTER: --please, would you use the--

MR. HARTFORD: --if it please the Court, I would object to the three motions filed on May 19, the Motion for Change of Venue, the Motion to Disqualif, and in addition, the Motion to Vacate the Court's Order, under Rule 60-B, on behalf of - of the Plaintiff in this matter, Bertha A. Graham, now or I. Graham, Now Zahorsky; and I would also indicate- I believe in his statement Mr. Graham indicated there were additional pleadings filed

today - ah- my file does not indicate a receipt of any copy of any additional pleadings.

THE COURT: Well, first of all, apparently, the-the thrust of all these Motions that were filed-and I did not mention the Motion to Vacate the Judgment-the Motion to Vacate the Judgment brought about, apparently, the voluntary disqualification of Judge Bettis. The Motion to Vacate the Judgment, apparently, is the main thrust of the Plaintiff's seeking all this additional relief, and that, apparently, is what will some time be heard, whether or not hte judgment should be vacated.

Now, he has filed, apparently, along with this Motion some form of Affidavits, which, frankly, are not too clear, but I guess on the face of them they ask for the disqualification of Judge Kennedy.

Now, first of all, going to the matters of the Motion for Change of Venue, in 47 Ohio Appellate 2d, Page 28, CUYAHOGA COUNTY BOARD OF MENTAL RETARDATION VS. THE ASSOCIATION OF

CUYAHOGA COUNTY TEACHERS, THE Court in that case held, and I quote:

> "When an affidavit of disqualification has been properly filed with the clerk of courts, a trial judge is without authority to proceed with the case or to enter judgment therein, until the Chief Justice of the Ohio Supreme Court has passed upon the issue of disqualification."

Therefore, this Court has no jurisdiction to hear any motions relative to change of venue or to vacate judgment until the Chief Justice has passed upon the matter of the Court's disqualification. When - the statute, 2701.03 provides:

> ***On the filing of an affidavit by any party to the cause or matter *** setting forth the fact of the interest, bias, prejudice or disqualification, the clerk of the court of common pleas shall enter the fact of the filing on the trial docket in the cause and forthwith notify the Chief Justice of the Supreme Court. The Chief Justice, or nay judge of the Supreme Court designated***shall pass upon the disqualificaton.***"
>
> If the Supreme Court or any Judge finds that the Judge is disqualified, the Court of Common Pleas of which the disqualified Judge is a member, shall assign the cause or matter to another judge.

Therefore, it's quite clear under the law

that - and I have checked with the Clerk of Courts, the Supreme Court Chief Justice has been notified, and he has not apparently made a determination as to whether or not I am disqualified, so until such time as he makes a determination of disqualification, no further action can be taken on any Motions in this case.

So, therefore, that concludes the hearing.

MR. HARTFURD: Thank you, your Honor.

the court; Okay, you can put on the docket;

This matter came on to be heard on a Motion for a Change of Venue. Plaintiff's counsel, Mr. Hartford, appeared; the Defendant Graham appeared.

The Court Finds that there has been filed with the Clerk of Courts an Affidavit of prejudice of disqualification against Judge Kennedy, and that, therefore, until the Chief Justice of the Supreme Court determines whether or not Judge Kennedy is disqualified and assigns another Judge to hear the matter, this Court has no jurisdiction to hear any motions in

this case.

MR. HARTFORD: Thank you.

WHEREUPON, COURT WAS ADJOURNED.

CERTIFICATE OF COURT REPORTER

I, Virginia M. Pastore, Official Court Reporter in and for the Common Please Court of Columbiana County, Ohio, Do hereby certify that the foregoing is a complete and accurate transcript of the proceedings had at and during the trial of the within entitled cause tried in said Court on July 29th, 1982, consisting of eight pages, and was transcribed by me from the official recording tapes and shorthand notes used at said trial by me.

APPENDIX D

Decision of the Ohio Supreme Court in Alvie B. Graham v. J. Warren Bettis, Judge, et al., (No. 82-1517, April 20, 1983)

THE STATE OF OHIO)
)
City of Columbus)

1983 TERM

The State of Ohio, ex rel. Alvie B. Graham, Petitioner, vs. J. Warren Bettis, Judge, et al., Respondents.

To wit: April 20, 1983

No. 82-1517

IN MANDAMUS ON MOTION TO DISMISS

This cause originated in this court on the filing of a mandamus and was considered in the manner prescribed by law. On consideration thereof, it is ordered by the court that the motion to dismiss be sustained and the cause dismissed.

FOR YOUR
INFORMATION
ONLY
NOT FOR FILING

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 20th day of April, 1983

James Wm. Kelly Clerk

SUPREME COURT'S ANNOUNCEMENTS

82-1517. State of Ohio, ex rel. Alvie B. Graham, Petitioner, v. J. Warren Bettis, Judge, et al., Respondents
In Mandamus.
On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Celebrezze, C.J., W. Brown, Locher, Holmes, C. Brown and J.P. Celebrezze,J.J., concur.
Sweeney, J., not participating.

82-1535. Samuel Emerson Fisher, Petitioner, v. Lou Clark, Sheriff, Respondents.
In Habeas Corpus.
On Motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Celebrezze, C.J., W. Brown, Sweeney, Locher, Holmes, C. Brown and J.P. Celebrezze, J.J., concur.

83-32. State of Ohio, ex rel. William E. Bochanon, Petitioner, v. Court of Common Pleas of Warren County, Respondent.
In Mandamus.
On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Celebrezze, C.J., W. Brown, Sweeney, Locher, Holmes, C. Brown and J.P. Celebrezze, J.J., concur.

83-71. Jessie K. Lee, Petitioner, v. Ted Engle, Supt., Respondent.
In Habeas Corpus.
On motion to dismiss. Motion to dismiss sustained. Cause dismissed.
Celebrezze, C.J., W. Brown, Sweeney, Locher, Holmes, C. Brown and J.P. Celebrezze, J.J., concur.

83-116. Larry Calloway, Petitioner, v. Ted Engle, Supt., Respondent.
In Habeas Corpus.
On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Celebrezze, C.J., W. Brown, Sweeney, Locher, Holmes, C. Brown and J.P. Celebrezze, J.J., concur.